

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>JAMEEL M. FUTRELL,</b>	:	
<b>Petitioner</b>	:	<b>No. 1:12-cv-02492</b>
	:	
<b>v.</b>	:	<b>(Judge Kane)</b>
	:	
<b>DAVID A. VARANO, <u>et al.</u>,</b>	:	<b>(Magistrate Judge Carlson)</b>
<b>Respondents</b>	:	

**ORDER**

**THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:**

Before the Court is the October 12, 2017 Report and Recommendation of Magistrate Judge Carlson (Doc. No. 72), recommending that this Court deny Petitioner Jameel M. Futrell's second motion to amend his petition for writ of habeas corpus submitted pursuant to 28 U.S.C. § 2254 to assert a claim of actual innocence based upon newly discovered evidence (Doc. No. 70), deny the originally-filed § 2254 petition (Doc. No. 1), decline to issue a certificate of appealability, and close the above-captioned case.

Petitioner has submitted objections to Magistrate Judge Carlson's Report and Recommendation. (Doc. No. 72.) First, Petitioner challenges Magistrate Judge Carlson's recommendation that this Court deny him further leave to amend his petition to assert an actual innocence claim relating to his conviction for criminal conspiracy to commit possession with intent to deliver cocaine. (Id. at 2.) Specifically, Petitioner insists that the affidavit he has produced from co-conspirator Arthur Hines, attesting to Petitioner's lack of knowledge of his involvement in a drug transaction arranged by Mr. Hines, and describing the circumstances surrounding Mr. Hines's refusal to testify at Petitioner's trial, constitutes newly discovered evidence of his innocence entitling him to amendment of his petition. (Id. at 2-3.) Second, Petitioner generally argues that, contrary to Magistrate Judge Carlson's findings, the claims

advanced in his initial § 2254 petition “were timely raised and do have merit[,] . . . [as t]hey were raised in the Petitioner’s pro se PCRA petition or PCRA counsel’s amended PCRA petition,” and notes that “[h]ere, the State has unreasonably applied clearly established Supreme Court law.” (Id. at 3.)

Having thoroughly considered Petitioner’s objections to the Report and Recommendation, the Court finds that Magistrate Judge Carlson correctly and comprehensively addressed the substance of Petitioner’s objections in the Report and Recommendation itself. Thus, the Court will not write separately to address Petitioner’s objections.

**ACCORDINGLY**, on this 3rd day of November 2017, upon independent review of the record and the applicable law, **IT IS ORDERED THAT:**

1. The Court **ADOPTS** the Report and Recommendation of Magistrate Judge Carlson (Doc. No. 72);
2. Petitioner Jameel M. Futrell’s motion to amend his petition for a writ of habeas corpus submitted pursuant to 28 U.S.C. § 2254 (Doc. No. 70), is **DENIED**;
3. The petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 (Doc. No. 1), is **DENIED**;
4. The Court declines to issue a certificate of appealability, as the Petitioner has failed to demonstrate “a substantial showing of the denial of a constitutional right,” see 28 U.S.C. § 2253(c)(2); and
5. The Clerk of Court is directed to **CLOSE** this case.

s/ Yvette Kane  
Yvette Kane, District Judge  
United States District Court  
Middle District of Pennsylvania